

NUCLEAR REGULATORY COMMISSION

SOUTHERN NUCLEAR OPERATING COMPANY

ALABAMA POWER COMPANY

JOSEPH M. FARLEY NUCLEAR PLANT, UNITS 1 AND 2

DOCKET NOS. 50-348 AND 50-364;

NRC-2009-0375

EXEMPTION

1.0 BACKGROUND

Southern Nuclear Operating Company (SNC, the licensee) is the holder of Facility Operating License Numbers NPF-2 and NPF-8, which authorize operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (FNP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Houston County, Alabama.

2.0 REQUEST/ACTION

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans.

By letter dated June 9, 2009, as supplemented by letter dated July 31, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's June 9, 2009, letter and certain portions of its July 31, 2009, letter contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be in place by December 15, 2010, versus the March 31, 2010, deadline. Being granted this exemption for the three items will allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

3.0 DISCUSSION OF PART 73 SCHEDULE EXEMPTIONS FROM THE MARCH 31, 2010, FULL IMPLEMENTATION DATE

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest. This exemption would, as noted above, allow an extension from March 31, 2010, until December 15, 2010, to allow for temporary noncompliance with the new rule in three specified areas. The NRC staff has determined that granting of the licensee's

proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule sent to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009 letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009 letter.

Farley Schedule Exemption Request

The licensee provided detailed information in Enclosure 1 of its supplemental submittal to the SNC June 9, 2009, letter requesting an exemption. It describes a comprehensive plan to expand the protected area (PA) by approximately 100 percent with upgrades to the security capabilities of its Farley site and provides a timeline for achieving full compliance with the new regulation. Enclosure 1 contains proprietary information regarding the site security plan, details of specific portions of the regulation where the site cannot be in compliance by the March 31,

2010, deadline and why, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by December 15, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project (i.e., new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

As described in its submittals, the licensee will maintain the current PA until the site modifications are completely implemented by December 15, 2010. Enclosure 2 to the July 31, 2009, submittal includes safeguards (SGI) information that describes compensatory measures the licensee will incorporate into the Joseph M. Farley Nuclear Plant Site Security Plan by the compliance date of March 31, 2010, which will supplement the protective measures already in place to maintain high assurance against radiological sabotage. The licensee indicated that with the incorporation of the extended protected area (PA) by December 15, 2010, the Farley Nuclear Plant will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 CONCLUSION FOR PART 73 SCHEDULE EXEMPTION REQUEST

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until December 15, 2010.

The Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. The licensee has compensatory measures as described in Enclosure 2 to its supplemental letter of July 31, 2009, that the staff finds acceptable. The basis for this determination is that the current site protective strategy has been approved by the NRC staff as providing high assurance for the

protection of the facility and public from the effects of radiological sabotage. As a condition of the Commission's approval, these compensatory measures must be in place by March 31, 2010, and incorporated into the site security plan in accordance with 10 CFR 50.54(p)(2) or 10 CFR 50.90, as determined by the licensee to be appropriate.

The long-term benefits that will be realized when the PA expansion is complete justifies exceeding the full compliance date in the case of this particular licensee. Therefore, it is concluded that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010 deadline for the three items specified in Enclosure 1 of SNC letter dated July 31, 2009, the licensee is required to be in full compliance with 10 CFR 73.55 by December 15, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e. 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Find of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment dated August 26, 2009 (74 FR 43169).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of August 2009.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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